**PUBLIC COMMENT ON THE ABENGOA VISTA RIDGE/SAWS/BLUE WATER DRAFT CONTRACT**

Prepared by Michelle A. McFaddin, Attorney at Law

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 My name is Michelle McFaddin. I am a licensed attorney retained by Texas League of Independent Voters. Between 2007 and 2013, I was employed by the Texas Water Development Board as the lead attorney for the federal and state water and wastewater infrastructure loan programs. In that capacity, I assisted SAWS in financing its Brackish Groundwater Desalination Project through the state Water Infrastructure Fund program. In my experience, SAWS is a sophisticated borrower with staff that is knowledgeable and experienced in implementing large-scale, complex projects.

I obtained a copy of the 581-page September 25, 2014 draft contract, related appendices and reference documents on Friday and my reaction is simple - why isn't SAWS financing and implementing this project itself using the heavily subsidized financing options available through either state infrastructure loan programs or through the market at rates significantly lower than those proposed by Abengoa. I feel confident that the Board must have asked itself these same questions over the weekend.

A. SAWS is effectively in control of the project

Although the risk of project financing, design and construction as well as ongoing operation of the groundwater wells, water treatment facilities and transmission line appear to have been allocated to Abengoa affiliates, in reality:

● SAWS is required to reimburse Abengoa for the costs of financing and designing this project up to $40,100,000 even if Abengoa can't obtain financing or is unwilling or unable to perform its obligations pursuant to §4.6(a) and Appendix 18 of the draft contract;

● SAWS is required to reimburse Abengoa for all reasonable costs of operating and maintaining the Project facilities pursuant to Art. 17 and Appendix 19 of the draft contract;

● Although it may appear that construction and operational risks have been transferred to Abengoa, in fact SAWS retains significant control over project implementation which suggests to me that the Board has concerns about whether Abengoa has the ability to perform under this contract. SAWS has (1) an option to purchase the initial securities (bonds) used to finance the project; (2) the ability to purchase project assets at any time after closing; (3) the ability to force the design/construction contractor as well as the operating service provider to follow its instructions rather than Abengoa's at any time without cause; and (4) the ability to terminate the Agreement at any time prior to closing unless there is an offering of securities pending and thereafter if Abengoa defaults on its obligations;

● SAWS has not in fact shifted all of the risk to Abengoa. SAWS still bears the risk that (1) groundwater cannot be produced up to the baseline amount of 50,000 acre-feet per year; and/or (2) that the groundwater will require extensive treatment before it can be used by SAWS - and the raw water permitting and treatment costs are not factored into the cost of water under this agreement; these are hidden costs that may be significant.

B. SAWS or a newly-created Municipal Water District or Regional Utility Authority can obtain financing for this project at significantly lower cost

 ● SAWS and/or an MWD or Regional Utility Authority could obtain heavily subsidized financing through the TWDB's tax-exempt water infrastructure loan programs - saving 200-300 basis points. In order to qualify for funding from the state water infrastructure funds, the project needs to listed on the 2017 State Water Plan. There is no need to get listed on the State Water Plan in order to obtain funding using Texas Water Development funds although the interest rate for DFund loans is typically higher. Currently, the interest rate for tax-exempt financing under the Water Development Fund (DFund) program is 3.18% as opposed to the max. 6.04% rate proposed by Abengoa.

 ● SAWS borrowing costs will be substantially less than any rate charged under this draft contract since Abengoa's credit rating is two levels below investment grade. A private entity like Abengoa may not be eligible for or credit-worthy enough to qualify for tax-exempt financing. Its proposed financing options are 1) the issuance of private activity bonds - if these bonds are even available, the actual feasibility of PAB financing is not addressed; 2) the issuance of corporate bonds that do not have any investment grade rating requirements, perhaps like the "Green" Euro bonds issued by Abengoa recently - it should be noted that this offering was not fully suscribed at an interest rate of approx. 5.5%, half of the offering had to be sold at 6.5%, suggesting that SAWS will be looking at the max. 6.04% interest rate; or 3) through the issuance of municipal bonds. Abengoa's eligibility for tax-exempt financing through the issuance of municipal securities is questionable.

C. If a private partnership is required to finance and implement this project either because of political concerns or because SAWS already has too much outstanding debt, why contract with Abengoa to finance and implement this project?

 ● Abengoa is a risky choice because Abengoa's ratings with Moody's, Standard & Poor and Fitch are not of investment grade and have been consistently downgraded over the past 2 years.

 ● According to Abengoa's most recent annual report to the SEC, it already has a high level of indebtedness (11,975 million Pounds total with only 581 million Pounds left for additional corporate borrowing). It is not clear whether the recent "Green" Euro offering used up some of this remaining borrowing capacity.

 ● Its SEC Form 20-F report also indicates that Abengoa has generated significant negative cash flows in the past three years and its liabilities at the end of these fiscal years have exceeded its tangible assets.

 ● Should Abengoa default on its obligations under the contract, SAWS only recourse will be to take over the project since any judgment rendered by a U.S. Court based on breach of contract or securities fraud may well not be enforceable in a Spanish Court of law.

 ● Texas residents have recently experience significant difficulties with another Spanish company that was brought in to finance and construct another infrastructure project, the Texas Tollways project; the bonds issued to pay for Texas Tollways are in trouble; there has been talk of possible default and ongoing service-related problems.

 ● Bottom Line - does San Antonio need these kinds of problems with its future water supply?

D. Conclusion

 ● SAWS has indicated that Abengoa-Vista Ridge accepts the regulatory risk of making 50,000 acre-feet of groundwater available for the next 30 years but neglects to mention that it has to reimburse Abengoa for its financing, design, construction, treatment and operational costs. Moreover, SAWS still has the risk that it will not be able to acquire 50,000 acre-feet/year of useable quality groundwater whether or not Abengoa risks the lost revenue.

 ● SAWS argues that by executing this agreement, it will cap interest rate exposure but neglects to mention that the maximum capped rate of 6.04% under this Agreement is significantly in excess of the tax-exempt interest rates that would apply if the project were being financed through the TWDB's water infrastructure loan programs (3.18% today for the DFund program) and even the market-based taxable rates being used by the TWDB.

 ● SAWS suggests that it is imperative that it sign a contract to ensure that it obtains up to 50,000 acre-feet/year of water right now for possible delivery as soon as 2019 but has not demonstrated that it needs this entire amount by 2019. SAWS has time to work with the TWDB and, if needed, the legislature to get the project onto the 2017 State Water Plan if it wants to avail itself of the state water infrastructure fund rate subsidies. Moreover, it has the time to create a water district or regional utility authority to obtain tax-exempt project financing and to implement this project if it does not want to bear the risk of project financing and implementation.

 ● SAWS has argued that it benefits its ratepayers to have a private, third party build the well-field infrastructure, pipeline and related treatment and transfer facilities rather than implementing this project itself but is it advantageous if (1) the third party does not possess an investment grade rating for purposes of financing (unlike SAWS which has an excellent investment rating); (2) the third party is in questionable financial condition according to its own regulatory filings; and (3) the third party's American subsidiary is a Delaware-based limited liability company? The whole reason to create a limited liability company is to LIMIT LIABILITY.

There is no reason for SAWS or the City of San Antonio to rush forward to commit to a 581-page contract that was only released late last week - not with the questions, concerns and issues that you no doubt had when you reviewed the draft contract over the weekend as well as those that have been raised during the public comment period this morning. Thank you for this opportunity to present public comment.